

SCRUGGS
Lord Salisbury's mistakes

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Lord Salisbury's Mistakes,

BY . . .

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LORD SALISBURY'S MISTAKES.

In his official note of the 26th of November last, intended as a reply to Mr. Olney's of the 20th of July, Lord Salisbury makes some very surprising statements relative to the boundary dispute with Venezuela, which, in all probability, he would not repeat now; but since they remain without qualification or amendment, seem to demand some notice.

He states, for instance, that the boundary dispute "did not, in fact, commence till after the year 1840;" that "the title of Great Britain to the territory in question is derived, in the first place, from conquest and military occupation of the Dutch settlements in 1796;" and that "both on this occasion, and at the time of a previous occupation of those settlements in 1781, the British authorities marked the western boundary of their possessions as beginning some distance up the Orinoco beyond Point Barima, in accordance with the limits claimed and actually held by the Dutch."

It is hardly necessary to point out that the dispute began at a much earlier date than 1840. In the year 1822, the Colombian Confederation, of which Venezuela was then a constituent member, instructed its Minister at London to inform the British Government that any English settlers west of the Esequibo, would be expected either to retire or to place themselves under the jurisdiction of the Colombian authorities. Circumstances soon arose which made it impossible, for the time being, to

carry out these instructions, but that did not nullify them nor change their import. The manifest object was to claim, as the successor in title of Spain, all territory west of the Esequibo, which had always been regarded as the legal boundary between Spain and Dutch Guayana. The dispute arose again in 1836, as appears from the official note of the British Minister in Caracas, dated May 14th of that year, addressed to the Venezuelan Government. Moreover, it is very well known that, even as late as 1836, England's extreme claim, as the successor in title of Holland, did not extend beyond Cape Nassau and the Pumaron River.

It is true that what was known as Dutch Guayana had been previously the property of the Crown of England, and that the English had made some settlements on the Surinam River. But in the time of Charles II. these settlements were captured and held by the Dutch in retaliation for the British capture and occupancy of the Dutch settlements in North America; and in February, 1674, the Dutch obtained a cession of all the British possessions in Guayana in exchange for those of Holland in North America. This, of course, left England without any claim to territory in Dutch Guayana, which then, as now, was limited to the settlements ceded to Holland by Spain by the treaty of Munster in 1648.

The temporary military occupations of these settlements by the British in 1781 and 1796, to which Lord Salisbury refers, certainly conveyed no permanent title. This appears from subsequent treaties between the two countries, and more particularly from the treaty of Amiens, of 1802. Least of all could such temporary

occupancy have enlarged the area of Dutch Guayana. For, by the treaty of Utrecht, of 1713, England covenanted to "aid the Spaniards to recover the ancient limits of their dominions" in America "as they stood in the time of the Catholic King Charles II.;" that is to say, as they stood in 1700, when Charles II. died. It is manifest, from the official correspondence and maps of that period, that the western boundary between Spain and Dutch Guayana was then the River Esequibo, which continued to be regarded as the legal boundary up to 1791. This is manifest from the terms of the treaty of Aranjuez of that year, and also by the events and official correspondence which preceded and led to that compact.

That Dutch Guayana was then limited to the four "establishments" or settlements of Surinam, Demerara, Berbice, and Esequibo, scarcely needs to be pointed out; and all geographers agree that the province of Berbice extended from the Surinam to the Berbice River, that of Demerara from the Berbice to the Demerara River, and that of Esequibo from the Demerara to the Esequibo River.

That the Dutch did make, in violation of the treaty of 1648, spasmodic attempts to extend their settlements beyond the Esequibo, is not denied. They even established two temporary fortifications on the left bank of the Pumaron, near its mouth, and attempted to found settlements near Cape Nassau. But these aggressions were always repelled by the Spaniards; and, in point of fact, those settlements, and also the fortifications on the Pumaron, had been abandoned by the Dutch in 1783, as

appears from the official report of Don José Felipe de Inciarte of December of that year. And this is confirmed by Dutch testimony of the most unimpeachable character, as may be seen by reference to the note of a Dutch official, Mr. Six, of 1794, addressed to the Spanish Minister in Holland.

In 1803 the three settlements or colonies of Esequibo, Berbice, and Demerara capitulated successively to the English, who, later on, held military possession of the whole of Dutch Guayana. But by the final treaty of peace, which followed in 1814, England agreed to restore to Holland, within the period of three months, all "the colonies, factories, and establishments" therein, except only the three "settlements of Demerara, Esequibo, and Berbice." These were to be disposed of by a "Supplementary Convention," to be negotiated "especially with reference to the provisions contained in the VIth and IXth articles of the treaty of peace" of May, 1814. By that "Supplementary Convention," which is dated August 13, 1814, Holland, in consideration of certain sums of money, to be advanced by England under the conditions therein specified, ceded to England "in full sovereignty" the three "settlements" named, but no more.

Here, then, we have the source, and the only legitimate source, of England's present claim to territory in Guayana. That it is expressly limited to the three "settlements" named, as they stood on the 13th of August, 1814, is manifest. England is therefore justly entitled, as the successor of Holland, to all the territory within the then recognized limits of those three "settlements," but not to one foot of ground beyond. Holland never

had a fifth "settlement" or colony between the Esequibo and the Orinoco; but even if she had, certainly no part of it was ceded to England by the Supplementary Convention of August 13, 1814. Nor has there ever been any such concession since, either by Holland, Spain, Colombia, or Venezuela. Nor could there have been any such cession by the native Indian occupants, for the ultimate dominion of the soil could not have been conveyed by them, even had they attempted it, which nowhere appears.

In view of these facts, so easy of verification, it seems almost incredible that Lord Salisbury should maintain that Mr. (afterwards Sir Robert) Schomburgk, "did not discover or invent any new boundaries" in making out his capricious divisional line of 1840. Schomburgk did not himself take this view of the case, as appears from his book published in London in that year. For he therein says he followed, not the historic limits, but those "which nature prescribed by its rivers and mountains." He assumed English possession of the mouth of the Esequibo, and then by a contested rule, seldom attempted to be applied, claimed for England the entire watershed of that river. He even went beyond this, and drew a tentative line including the Guaima and Amacura rivers, both of which are in the eastern watershed of the Orinoco. That his capricious line was promptly disclaimed by the British Cabinet, who ordered its obliteration by the Demerara Colonial Government, and that it was in fact obliterated, and a new one proposed beginning at the mouth of the Moroco River, are facts too well known to admit of controversy.

And yet Lord Salisbury makes the astonishing statement that "while Mr. Schomburgk was engaged in this survey, the Venezuelan Minister at London had urged Her Majesty's Government to enter into a Treaty of Limits;" and that "as soon as Her Majesty's Government were in possession of Mr. Schomburgk's reports, the Venezuelan Minister was informed that they were in a position to commence negotiations." Now, the truth is, Dr. Fortique, the Venezuelan Minister at London, acting under specific instructions from his Government, made it a condition precedent to any negotiation of boundary that the so-called "Schomburgk line" be not only disclaimed but obliterated, although it was then claimed by Lord Aberdeen to represent nothing more than the extreme limit of England's pretension, and not, as now, an absolute boundary. It was not till after Lord Aberdeen had disclaimed the line, and had given assurances that it would be promptly obliterated, that negotiations were commenced. Then it was that the Venezuelan Minister opened negotiations and re-asserted the Esequibo River as the rightful boundary, and that Lord Aberdeen proposed another divisional line beginning near the mouth of the Moroco. It is true, as Lord Salisbury says, that in making this proposition Lord Aberdeen imposed two conditions, namely, that Venezuela would agree not to alienate any portion of the remaining territory to a third power, and not to maltreat the Indian occupants. But he omits to state that Lord Aberdeen refused to make these conditions mutual; and that it was pending these negotiations that he orally proposed arbitration, to which "no immediate answer" appears to have been given by Venezuela.

The agreement of 1850, to which Lord Salisbury refers, followed in due course, whereby both parties were obligated not to occupy or attempt to occupy any portion of the then unoccupied territory in dispute till after the question of boundary should be finally settled. That the territory then in dispute did *not* extend to the Orinoco, or to anywhere near it, is manifest from the fact that the British Government had more than once, and in more forms than one, distinctly recognized Venezuela's right of domain and jurisdiction, not only at the Orinoco delta, over Point Barima, and at the mouth of the Amacura, but even as far eastward as the Moroco River. Indeed, as late as June, 1887, more than a whole year after England had taken forcible possession of Point Barima and fortified the mouth of the Amacura, the Governor of Demerara declared officially, before the Colonial Assembly, that England would not guarantee any protection or compensation to British settlers in that vicinity in case the boundary question should be decided in favor of Venezuela.

Each party now accuses the other of having violated the agreement of 1850. But even if both accusations were true, it would not be material to the real issue involved in the boundary dispute. For it will hardly be contended by either party that such *de facto* occupancy conveys legal title.

But that England did violate the Agreement is conclusively shown by Lord Salisbury's own statements. He admits that his government re-established the discarded Schomburgk line, and took forcible possession of all the territory within it. This was clearly in violation of the Agreement of 1850. He attempts to justify this by alleg-

ing, first, that the disavowal and obliterating of that line by Lord Aberdeen in 1842 was a concession "made on the distinct understanding that Great Britain did not thereby in any way abandon her claim to that position ;" and, second, that Venezuela had previously violated the Agreement by establishing new settlements, and by granting mining concessions, within the disputed territory.

Both these statements are incorrect. As to the first, Lord Aberdeen's note of January 31, 1842, will not bear the construction here placed upon it. His exact words were these: "Her Majesty's Government must not be understood to abandon any portion of the rights of Great Britain over the territory which was formerly held by the Dutch in Guiana." Here is a wide distinction between the reservation of a capricious frontier line which had just been specifically and unconditionally abandoned, and a general reservation of rights to territory, be it much or little, that "was formerly held by the Dutch in Guiana." As to the second allegation, Venezuela believed, on just grounds, that the disputed territory contemplated by the Agreement of 1850 was, at the utmost, that comprised between the Moroco and the Esequibo rivers. Consequently, she has always insisted, as she still insists, that the mining concessions of which Lord Salisbury complains, were never intended to include, and did not in fact include, any portion of the territory then in dispute; while a glance at any good map of the country will show that the new settlement or township of Nueva Providencia, of which Lord Salisbury complains, is wholly beyond even the repudiated Schom-

burgk line. Besides, it is very generally understood that not one of the concessions referred to ever amounted to anything. They all lapsed by limitation before the conditions were complied with.

Again, Lord Salisbury says: "The claim put forth by Venezuela," to all the territory west of the Esequibo, "would involve the surrender of a province now inhabited by 40,000 British subjects," and which "has been in the uninterrupted possession of Holland and Great Britain successively for two centuries. He makes this statement in the very face of the generally accepted historical fact that Holland never at any time had "uninterrupted possession" of a single foot of ground west of the Esequibo, nor even any temporary establishments west of the Moroco River; while by the public treaties, already cited, England's present claim is distinctly limited to the *three* Dutch settlements of Demerara, Berbice, and Esequibo, as those settlements stood in 1814. And surely he would not be understood as contending that mere occupancy, in time of peace, of disputed territory after the dispute had arisen, can invest title by prescription; or that *because* there are "40,000 British subjects" west of the Esequibo, *therefore* the country they inhabit is necessarily British territory.

As a matter of fact, however, it is very well known that there are no "40,000 British subjects" settled west of the Esequibo. There are not the half of that number. It is extremely doubtful whether there are as many as 10,000. According to the latest and most reliable census reports, the population of the whole of British Guayana hardly exceeds 300,000. Of these over 100,000 are ne-

groes, most of whom are aliens from the West India islands, and comparatively few of them can be said to have any settled habitation. Fully 150,000 more are East Indian and Chinese coolies, who were brought out from Calcutta and Canton and elsewhere in India and China under five years indenture, and are, at best, little more than slaves. The entire white population of the whole of British Guayana is probably less than 3,000, and the voting population less than 2,400.

West of the Esequibo there is not a single British settlement that was not made against the oft-repeated remonstrances and formal protests of the Colombian and Venezuelan authorities. Those between the Pumarón and Moroco rivers, as also those on the Cuyuni, are of comparatively recent origin. It is believed that not one of them existed as late as 1850, and certainly not one of them has ever had even the passive concurrence of Venezuela. Those west of the Moroco and on the eastern estuary of the Orinoco are of still later origin. Certainly not one of them existed twenty years ago, while those at Barima Point, on the Brazo Barima, on the Guaima, and at the mouth of the Amacura are less than a dozen years old.

Lord Salisbury's allusion to Venezuela as "the self-constituted inheritor of Spain," is still more unfortunate. For surely, at this late day, he would not be understood as contesting the long-established rule—repeatedly applied by the United States, and as repeatedly recognized by Great Britain—that "when a European colony or dependency in America becomes independent, it succeeds, *ipso facto*, to the territorial limits of the colony or

dependency as they stood in the hands of the parent country." And it would be quite as absurd to assume that he now proposes to make Venezuela the first and only exception to that rule three quarters of a century after the independence of the country has been formally recognized by the powers of the world.

He clearly misapprehends the meaning of the declarations in the Venezuelan constitution, and of similar declarations in the fundamental laws of the old Colombian Union, namely, that "the territory of the Republic comprises all that which, previously to the political changes of 1810, was denominated the Captaincy General of Venezuela." Such declarations by "a newly constituted state" he says, "can have no valid force as against international arrangements previously concluded by the nation from which it has separated itself." Assuredly not; nobody has ever contended that it can. What is contended for is, that the limits of the territory comprised in the Captaincy General of Venezuela, as they stood in 1810, are to-day the rightful limits of the territory of the Republic as the legitimate inheritor of Spain. In other words, the western frontier boundary between Spanish and Dutch Guayana in 1810, wherever that was, is undoubtedly the present rightful boundary between Venezuela and British Guayana.

Lord Salisbury himself seems to admit this. For, further on in his dispatch, he says "the present difficulty would never have arisen if the Government of Venezuela had been content to claim only those territories which could be proved or even reasonably asserted to have been practically in the possession and under the effective

jurisdiction of the Captaincy General of Venezuela." It is denied that Venezuela has ever, either directly or indirectly, set up any claim beyond this. But let us waive that point and proceed to narrow the issue down to the single proposition here intimated. The terms "proved," "reasonably asserted," "practically in possession," and, "effective jurisdiction" become pivotal factors, and must apply with equal force to the case of both contestants; for it is indeed a bad rule that will not work both ways. It is therefore just as incumbent upon Great Britain to prove "practical possession," and "effective jurisdiction" by Holland as it is upon Venezuela to prove like conditions with respect to Spain. Upon this point there can be no room for disagreement.

The whole question, then, as thus limited, turns exclusively upon simple and readily ascertainable historical facts. But as to the verity of those facts, the parties in interest have thus far been unable to agree. Hence it is a question very properly referable to a joint commission or to outside friendly arbitration. And this is all that Venezuela asks. Is Great Britain now ready, as she was in 1844, and again in 1885, to join issue on this single point? If so, a settlement is already in sight. It only remains to agree upon the details.

True, Lord Salisbury says the agreement of May, 1885, to which I refer, "had reference to *future* disputes only;" and that "Her Majesty's Government have always insisted on a separate discussion of the frontier question, and have considered its settlement to be a necessary preliminary to other arrangements." But this, aside from being at variance with the facts, involves a contradiction

in terms. If "Her Majesty's Government have *always* considered" a settlement of the boundary question "to be a necessary preliminary to other arrangements," why did Her Majesty's Government agree to a draft of treaty in advance of such a preliminary settlement?

The fact is, however, that his lordship's statement is incorrect. It is supported neither by the draft treaty of 1885, nor by the official notes and protocols which preceded and led up to it. The agreement to arbitrate contemplates not "future disputes only," but such as should arise in the negotiations for the settlement of this identical boundary question. Article XV, as finally agreed to by Earl Granville, states, in so many words, that "If there shall arise *any* differences which can not be adjusted by the usual means of friendly negotiation, the two contracting parties agree to submit the decision of *all* such differences to the arbitration of a third power, or of the several powers, in amity with both, and that the result of such arbitration shall be binding upon both governments." Surely, no construction is necessary here to show that the terms "any differences" and "all such differences" contemplated any and all differences that should arise in the process of "friendly negotiation" for the settlement of the boundary question. Indeed, it is very well known that the differences and irritations growing out of that long pending negotiation were the prime occasion, if not the direct cause of the proposed treaty; and it hardly needs to be pointed out that "any differences" then thought of as present, would, if continued unsettled, become "future" differences and be properly described as such. Moreover, if there could be

any doubt on this point it would be entirely removed by the notes and protocols of the two plenipotentiaries—General Guzman Blanco and Earl Granville—in which it was steadily insisted on the one hand, and finally consented to on the other, that the provision for general arbitration in article XV of the draft treaty should include all differences respecting this very boundary dispute. Thus, in his final note of May 15, 1885, transmitting the revised draft, Earl Granville says, in so many words, that Her Majesty's Government "further agree that the understanding to refer differences to arbitration shall include *all* differences which may arise between the contracting parties, and not those only which arise on the interpretation of the treaty," as he had previously insisted.

Even Lord Salisbury himself must have understood the agreement in this sense when he repudiated it just seventy-two days later. In his note to General Blanco, dated July 27, 1885, he says: "Her Majesty's Government are unable to concur in the assent given by their predecessors in office to the general arbitration article proposed by Venezuela." Why? Because, to again quote his exact words, "questions might arise, such as those involving the title of the British Crown *to territory or other sovereign rights*" which "Her Majesty's Government could not pledge themselves beforehand to refer to arbitration."

This language, taken in connection with the occasion which called it forth, can have but one meaning. Lord Salisbury clearly understood that Article XV of the draft treaty, as it had been agreed to by his predecessor,

did provide, in a most unmistakable manner, for the reference to arbitration of “*all* differences” growing out of the long standing and still unsettled boundary dispute; and for that reason he repudiated it. But for that unfortunate (I will not say hasty and inconsiderate) action, the probabilities all are that the boundary dispute would have been amicably settled long ago.

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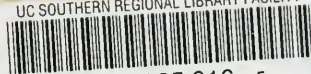
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